

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

|   |   |                     |
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| In the matter of the amendment of       | ) | NOTICE OF AMENDMENT |
| ARM 32.3.212 additional                 | ) |                     |
| requirements for cattle, 32.3.212B      | ) |                     |
| importation of cattle from Mexico,      | ) |                     |
| 32.4.201 identification of alternative  | ) |                     |
| livestock with the exclusion of         | ) |                     |
| omnivores and carnivores, and           | ) |                     |
| 32.4.1302 requirements for              | ) |                     |
| mandatory surveillance of Montana       | ) |                     |
| alternative livestock farm cervidae for | ) |                     |
| chronic wasting disease                 | ) |                     |

TO: All Concerned Persons

1. On July 7, 2017 the Department of Livestock published MAR Notice No. 32-17-285 pertaining to the proposed amendment of the above-stated rules at page 1001 of the 2017 Montana Administrative Register, Issue Number 13.

2. On July 21, 2017 the Department of Livestock published MAR Notice No. 32-17-285 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1101 of the 2017 Montana Administrative Register, Issue Number 14.

3. The department has amended ARM 32.4.201 and 32.4.1302 as proposed.

4. The Board of Livestock has voted that there will be no further action on ARM 32.3.212 and 32.3.212B.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments and testimony received and the department's responses are as follows:

**ARM 32.3.212 AND 32.3.212B**

COMMENT #1: One importer of M-branded cattle stated that the incidence of TB in the United States is less than .001%. In addition, through exhaustive work between the government of Mexico and the USDA, there are states in Mexico that have a lower TB rate than some states in the USA. All of the cattle we import are from the state of Chihuahua, which has achieved "eradication" status as outlined by the USDA. Further, those cattle are required to have a negative TB test before they are allowed to cross into the US and then have a second clean test before they can ship into Montana. All of this means that our herd of M-branded roping steers has been tested and proved clean more than any native herd originating in Montana. I urge

you to consider, as an alternative, requiring that the cattle be TB tested 60-90 days after entering the state to confirm that they are clean.

RESPONSE #1: Thank you for your comment. MDOL agrees that there is extensive work done by both the USDA and Mexico to ensure that animals imported into the United States and Montana are negative for tuberculosis (TB) and that Montana's current importation requirements exceed those of the USDA. Despite these requirements, tuberculosis is still found in Mexican origin cattle.

COMMENT #2: One commenter stated that Montana has the most stringent requirements of all states concerning TB. Don't let this pass; let's work together to figure out a better solution.

RESPONSE #2: The department disagrees. In consideration of this rule, MDOL consulted surrounding states for their import requirements and our current regulations that require two negative tests are consistent with multiple states. One noticeable difference, is that multiple states allow animals with a single negative test to enter the state under quarantine until a second TB test can be completed. The proposed language in this rule is modeled after North Dakota's current import requirements for Mexican origin cattle.

COMMENT #3: Another commenter stated that currently, the USDA requires at least one TB test prior to entry into the United States, which most states accept. Additionally, Montana requires another TB test prior to gaining entry into the state's borders. You would think that the minimum of two USDA tests would prove the animal does not have TB. If the test results are not reliable, fix the tests.

RESPONSE #3: The current testing protocol used for cattle relies on the caudal fold test. This test is reported to have a sensitivity of 85%. This means that if the test is used on 100 positive animals, it is only capable of detecting 85 of them. For animals suspect on this test, the comparative cervical test is used as a confirmatory test. The sensitivity of the test is only 75%. Animal health regulations recognize the limitations of this test. The development of improved testing methods is beyond the scope of this rulemaking process.

COMMENT #4: Several commenters also expressed that cattle are already testing twice. What science is backing this rule? Since there has not been to date any TB directly related to a Mexican horned steer, banning on the basis they carry TB after being tested by the USDA not once, but twice before entering Montana is ludicrous.

RESPONSE #4: Thank you for your comment. The department agrees, the state of Montana has had no cases of TB associated with Mexican origin cattle. Please see Responses #2 and #3.

COMMENT #5: As a PRCA stock contractor, the proposed amendment will have a direct impact on my livelihood. I think it is important to note that we are in the unique position of making our living through the transportation of our livestock. As such we

are more concerned about the health status of American livestock than most folks and support measures that legitimately secure that health. The steers we import from Mexico have been twice tested to TB by a USDA vet, before being allowed into Montana. The first test is done on the Mexico side of the border; if a steer is even a "reactor" to the test he is branded with an NC and will never be allowed to cross the border to America. The cattle are again tested, in the United States, before they are shipped to Montana. Each and every one of the cattle we import have had two negative TB tests before reaching Montana.

Additionally, M-branded sport cattle (for PRCA purposes at least) are exclusively mature castrated males, which limits the methods TB could be transmitted. Unlike dairy and beef breeds that are at risk of contracting the disease from unpasteurized milk, these cattle are long ago weaned when they are repeatedly tested.

Further, the US and Mexico have worked jointly to contain TB to such an extent that currently there are zones in Mexico with lower TB rates than some states in America. The 25-page "United States-Mexico Joint Strategic Plan for Collaboration on Bovine Tuberculosis" lays out the detailed plans implemented from 2013 to present to get zones in Mexico to "eradication" status. In previous years, the USDA has required even further testing of M-branded cattle before allowing importation to the United States

RESPONSE #5: The department appreciates your comment and agrees regarding the significant work done to prevent the importation of a TB-positive animal from Mexico. Regarding Mexican origin cattle for sporting purposes being exclusively castrated males and this limiting the methods that TB could be transmitted, TB is transmitted through respiratory secretions. This is typically through animals being in close proximity to each other or through exposure to contaminated shared equipment. The sexual status of animals has no impact on their ability to transmit disease.

Please see Responses #1 and #3 for additional information regarding the importation and testing of Mexican origin cattle.

COMMENT #6: One rodeo producer stated every year they import 180-220 M-branded sport type cattle for use in PRCA rodeos and some jackpots through the state. This rule could end up costing their company \$160,000 – 200,000 per year, depending on cattle prices. Due to the rules of the PRCA, they would still have to buy M-branded cattle for rodeos outside Montana, as well as native raised Corriente-type cattle for Montana rodeos. Native raised Corriente-type cattle are light boned, lighter horned, and overall less rugged at the same weight, than M-branded cattle. They have less durability and need to be replaced after fewer runs than M-branded cattle.

RESPONSE #6: The department thanks the commenter for the perspective on the potential economic impact of the proposed regulation. The department is charged with both fostering and protecting our livestock industry from disease. The

department agrees that particular care must be taken when considering rules that would significantly impact producers in our state.

COMMENT #7: I am a team roper and since North Dakota has banned the importing of M-branded cattle, the quality of team ropings in our state has gone downhill, mainly due to and because we do not have the proper number of cattle to produce a good event. We now go to Montana to the Yost arena in Billings and compete on great cattle at great events. A lot of North Dakotans come to Montana because of the quality of ropings in your state.

RESPONSE #7: The department thanks you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #8: Many commenters stated that team roping is a huge sport and brings tourist/travel dollars to communities state wide. Don't hurt Montana's pocket book.

RESPONSE #8: Thank you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #9: Many commenters expressed concern that this amendment will cripple the team roping industry in Montana. Team ropers and their families are a very big part of the Ag industry in Montana and spend millions of dollars in travel, equipment, horses, tack every year in this state.

RESPONSE #9: Thank you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #10: It is the opinion of the PRCA that the proposed amendments as to require that test eligible M-branded or Mx-branded cattle imported into Montana require proof of a whole herd negative tuberculosis test on the birth herd of origin are not only unnecessary, but place impossible restrictions on the importers and herd owners of said livestock. Adoption of such amendments would directly affect the quality of timed event stock and overall caliber of PRCA sanctioned events in Montana. The PRCA recognizes the seriousness of tuberculosis infection on the entire agriculture industry as well as human health. However, with a prevalence less than .001% nationwide and no cases of TB confirmed in Montana since 1991, the proposed amendments appear inordinate and misdirected.

RESPONSE #10: The department thanks you for your comment. The department is charged with the protection of our livestock industry and is authorized in 81-2-102(1)(e)(i), MCA to "... adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into the this state." The department agrees that the restrictions in the proposed rule are significant and are not commensurate with the risk of introduction of TB to domestic cattle from importation of Mexican origin cattle. The quality of

these animals for sporting purposes is outside of the scope of these regulations. Please see Responses #1 and #6 for information on the incidence of TB and the potential economic impact of this regulation.

COMMENT #11: Several commenters stated that M-branded cattle have harder horns, are quicker and stronger, live longer, cowboys favor and spectators enjoy them. I would like to see the study that shows that bovines with horns have more susceptibility of TB than bovines without horns – that is a wild theory, a bovine is a bovine. So, why take this drastic measure of banning an industry?

RESPONSE #11: The department thanks you for your comment. The proposed rule was promulgated in response to the potential risk of introduction of TB from the importation of Mexican origin cattle. Please see Response #1 for information on TB in Mexican origin cattle.

COMMENT #12: One commenter stated that the rules and bylaws, by which the Professional Rodeo Cowboys Association conducts business, are the backbone to a successful and progressive Livestock Welfare Program. These rules and bylaws do not only ensure fairness in competition, but preserve the historical integrity of, and provide for the future of, the sport. Specific requirements are set for timed event cattle utilized at PRCA-sanctioned events.

RESPONSE #12: The department thanks you for your comment. The content of the rules and bylaws of the Professional Rodeo Cowboys Association are beyond the scope of this rulemaking process.

COMMENT #13: Another commenter also stated that per PRCA rules (R8.12.2, R8.12.3. AND R812.4), cattle used in steer wrestling, team roping and steer roping are required to be of Mexican origin. These rules are in place for two reasons: quality of competition and humane use of animals. The cattle from Mexico have bigger horns, better bone quality and more muscle structure, which all makes for cattle with more durability and longevity.

As well, native raised Corriente cattle are of a much larger form at a much younger age, meaning they have softer, small horns, less bone mass and less muscle structure than M-branded cattle of the same weight. In addition, they are much larger at a young age so they are not as mature when they are a proper size to use as a sport. Along with all of this, there are not enough native, sport-type cattle being raised in the United States to fulfill the needs of the industry.

Native Corriente-type cattle raised state-side are typically part of a cottage industry and are only produced in small herds. As a result, in order to put together enough cattle for a large event, several herds must be assembled together, making the cattle uneven for competition.

RESPONSE #13: The department thanks you for your comment. The quality and quantity of animals for sporting purposes is outside of the scope of these

regulations. The department is charged with the protection of our livestock from the introduction of contagious and infectious disease. Please see Responses #10 and #11.

COMMENT #14: Several commenters feel there are no studies with facts that show horned cattle have spread more TB than nonhorned cattle. Humans have been incriminated in spreading TB to dairy cattle in some instances. Beef cattle, from everything I have been able to read have shown more prevalence in positives. Most of the roping cattle end up in the feedlots at some point and are not breeding or standing around to die.

RESPONSE #14: The department thanks you for your comment. Please be informed, however, that the proposed amendment applies to all Mexican origin cattle and not just to horned or sporting cattle from Mexico. It is correct that humans have also been implicated in the spread of TB. Please see Response #1 for information on TB in Mexican origin cattle.

COMMENT #15: One commenter shared that data obtained from the United States Department of Agriculture shows that, since 2001, there have been 416 tuberculosis cases in feeder and event cattle, of which only six cases have been attributed to event cattle of Mexico origin. Far and above the relatively low case could be attributed to event cattle, no tuberculosis cases have been attributed to event cattle of Mexico origin since 2011. Moreover, since 2001, less than 3% of all tuberculosis cases in the U.S. link back to an event cattle strain of tuberculosis. The philosophy that Mexico-origin Corriente event cattle pose increased risks regarding bovine tuberculosis are not necessarily supported by current data.

RESPONSE #15: The department thanks you for your comment. The information that you included citing the low risk of TB from Mexican origin cattle is correct.

COMMENT #16: Several commenters stated that North Dakota has implemented this same regulation and there are several cowboys who have completely quit entering rodeos in North Dakota. It is not out of the realm of possibility to have some of Montana's favorite sons designate other circuits and stop rodeoing all together in Montana if this rule is passed.

RESPONSE #16: Thank you for your comment. Please see Response #6 on the potential economic impact to industry in Montana.

COMMENT #17: Several commenters do not support this proposed amendment as the proposed measures would not provide any additional protection to the Montana beef industry and would be an extreme burden on those in the sport cattle industry. Similar regulations have been enacted in North Dakota and have proven ineffective. In addition, while the recent outbreak in Canada was likely a catalyst for concerns, it should be noted that Canada does not allow M-branded cattle into the country.

RESPONSE #17: The department thanks you for your comment. The department agrees that this proposed rule would have a significant impact to producers in the sport cattle industry. While the risk from Mexican origin cattle is low, it should be noted that there are detections of TB in Mexican origin cattle in the U.S. on an annual basis. Please see Response #1 for additional information on the detection of TB in Mexican origin cattle.

North Dakota has enacted similar requirements for Mexican origin cattle and has recently had a TB positive dairy herd. The epidemiological investigation of the TB case suggests human introduction of TB into the positive herd. To our knowledge, North Dakota has not had any TB positive cases associated with Mexican origin cattle.

The statement about Mexican origin cattle not being eligible for entry into Canada is correct. The recent TB case, while of a strain previously isolated in a Mexican dairy cow, was not attributed to contact with Mexican origin cattle.

COMMENT #18: Several commenters stated that if the department was committed to changing the import requirements for Mexican origin cattle, that some middle ground should be evaluated instead of a ban on Mexican origin cattle into Montana.

RESPONSE #18: The department thanks you for your comment. It is important to note that the proposed regulations are not a ban of Mexican origin cattle. The department recognizes, however, that due to the unique management of Corriente cattle in Mexico, obtaining the proposed negative test on the birth herd of origin will be a nearly impossible requirement for importers to meet. The department agrees that the risk from Mexican origin cattle is low and that working with industry on revised import regulations would be appropriate.

COMMENT #19: Several commenters expressed concern that the proposed regulations regarding M-branded cattle are government overreach and were done with political motivations in mind.

RESPONSE #19: The department thanks you for your comment. Evaluation of the merits of this rule are based upon the responsibilities of the Department of Livestock to protect the livestock industry of Montana and the risk of the introduction of TB from Mexican origin cattle. Please see Response #1 for information on the rate of TB in Mexican origin cattle.

COMMENT #20: One commenter stated the facts are that there have been significant strides in the eradication of TB both here in the United States and in Mexico, and the facts also show that Mexican cattle are not the only source of TB but also wildlife and even humans can infect cattle with TB.

RESPONSE #20: The department thanks you for your comment. It is true that wildlife and humans can also serve as reservoirs for TB in the U.S.

COMMENT #21: One commenter states that small producers risk entire beef industry.

RESPONSE #21: The department thanks you for your comment. The mission of the department is the protection of the entire livestock industry in Montana. Rules are established based upon risk, and not in response to the size of a segment of industry.

COMMENT #22: I live in Nebraska and agree 100% with the ban. There are enough USA native cattle to cover all rodeo and team roping events. It's time the USA steps up and protects the native USA cattle producer. We follow every law and vaccine program. You know the Mexican cattle owners are not doing the same thing. Why should we all expose ourselves when there are enough cattle in the USA to support the roping and rodeo events? There are only a handful that make a 6 zero living but there are thousands of us that raise native cattle that suffer with the influx of Mexican cattle. They purchase them for less and it only benefits them – not the ranchers that raise healthy, native cattle. Rodeos and roping events will do fine without the Mexican cattle.

RESPONSE #22: Thank you for your comment. The department is considering this rule based upon the potential risk of introduction of TB from Mexican origin cattle. The number of cattle available for sporting events is beyond the scope of this rulemaking process. Please see Response #1 and #5 for information on the potential risk of TB from Mexican origin cattle.

COMMENT #23: One practicing veterinarian shared that he knows two people this change could affect, but he is not sure their 600 head are worth risking the industry in Montana. He doesn't believe 600 roping steers should have the potential to disrupt our whole beef industry. If they can figure out how to keep quarantined and ship directly to a lot out of state that has an M-branded plan, then he would say "ok," and otherwise likes the idea of not allowing M-branded cattle.

RESPONSE #23: The department thanks you for your comment. Please see Response #21 regarding the merits by which this rule is evaluated.

The department appreciates the suggestion on intermediate requirements to address the potential risk of the introduction of TB into Montana from Mexican origin cattle. Please see Response #18 on alternative options for import requirements for M-branded cattle.

#### **ARM 32.4.201 and 32.4.1302**

COMMENT 24: One elk farm producer and the North American Elk Breeders Association support changes to the proposed rules. "This change would bring Montana on par with common regulatory rules in other states..." Since 2012, states have overwhelmingly opted for states to train cervid producers to take their own samples and submit them to the lab and not incur a vet bill every time an animal



dies. It is in the best interest for the elk producer to learn how to take good samples, they might not get credit for the test if it is not a quality sample. NAEBA believes the question to allow producers to tag their own animal should be resolved immediately to allow it. We are not aware of another state that does not allow this. Mandating veterinarians must tag animals is a solution in search of a problem. Montana already has a mandatory Chronic Wasting Disease program for elk producers, which requires an annual inventory. Therefore, a certificate veterinarian will hold ranches accountable for their inventories at least once every year. NAEBA respectfully urges Montana to make these changes without further delay.

RESPONSE #24: Thank you for your comment. Your comment is correct that this proposed rule change will make Montana more consistent with the regulatory rules of other states with alternative livestock programs. The department agrees that this change will benefit alternative livestock producers while not compromising surveillance for chronic wasting disease (CWD).

COMMENT #25: Montana Fish, Wildlife and Parks (FWP) views CWD testing of all alternative livestock mortalities as a critical component of CWD surveillance for the state of Montana. The agency understands that the proposed rule changes, which will allow some alternative livestock owners to tag animals and collect samples for CWD testing, are intended to improve CWD program compliance and we defer to Montana Department of Livestock to determine the best practices to attain this goal. FWP advocates that the Montana Department of Livestock maintain authority to adjust these rules if the proposed changes do not improve compliance.

RESPONSE #25: The department thanks FWP for their comments.

/s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Executive Officer  
Board of Livestock  
Department of Livestock

/s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State September 11, 2017.